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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/602,278	06/23/2000	Jose R. Brunheroto	BC999047/1455p	9149
54891	7590	02/19/2009		
IBM CORP. c/o SAWYER LAW GROUP LLP 2465 E. Bayshore Road, Suite No. 406 PALO ALTO, CA 94303			EXAMINER SALTARELLI, DOMINIC D	
			ART UNIT 2421	PAPER NUMBER
			NOTIFICATION DATE 02/19/2009	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patent@sawyerlawgroup.com

DETAILED ACTION

On October 29, 2008, the Board of Patent Appeals and Interferences overturned the examiner's art rejections of claims 30-49, but introduced a new ground of rejection pursuant to 37 CFT 41.50(b) under 35 USC 112 second paragraph to claims 40-49 for being indefinite.

In response to this decision, appellants reopened prosecution under the provisions of 37 CFR 41.50(b) by submitting an amendment within two months (submitted on December 29, 2008) for reconsideration by the examiner to address the outstanding rejection of claims 40-49 under 35 USC 112 second paragraph.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 40-49 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Independent claim 40 claims "A computer program product system for monitoring quality of service of play out of a digital video program, the system tangibly embodied on first and second computer-readable mediums, the computer product system comprising instructions". From this, it is unclear whether the appellant is defining the product as a machine consisting of first and second computer-readable mediums or as

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the instructions describing appellant's method for monitoring quality of service in a digital video program.

Allowable Subject Matter

3. Claims 30-39 are allowed.
4. Claims 40-49 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Conclusion

This action is made final in accordance with MPEP 1214.01 I.

After a final rejection, an applicant who desires further review of the matter must file a new notice of appeal, new appeal, and corresponding fees. See 37 CFR 41.50 (b) (1).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DOMINIC D. SALTARELLI whose telephone number is (571)272-7302. The examiner can normally be reached on Monday - Friday 9:00am - 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Miller can be reached on (571) 272-7353. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/Dominic D Saltarelli/
Examiner, Art Unit 2421